

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No. 05-20859-CR-HUCK(s)(s)

UNITED STATES OF AMERICA

v.

RAUL J. GUTIERREZ,

Defendant.

PLEA AGREEMENT

The United States of America, by and through the undersigned Assistant United States Attorney, and RAUL J. GUTIERREZ, (hereinafter referred to as the "defendant"), enter into the following agreement:

1. The defendant agrees to plead guilty to Counts 1 and 13 of Criminal Indictment No. 05-20859-CR-HUCK(s)(s). Count 1 charges a conspiracy from September 1996 through January 16, 2001 to commit wire fraud in violation of Title 18, United States Code, Section 1343 and to transport money obtained by fraud, in violation of Title 18, United States Code, Section 2314; all in violation of Title 18, United States Code, Section 371. Count 13 charges bank fraud on or about August 23, 2001, in violation of Title 18, United States Code Sections 1344 and 2.

2. The United States agrees to move to dismiss all remaining counts of the indictment in this case, as to this defendant, at the time of sentencing.

3. The defendant is aware that the sentence for these offenses will be imposed by the court considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by

the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that is has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximums authorized by law for the offenses identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

4. The defendant also understands and acknowledges that, as to Count 1, the court may impose a term of imprisonment of up to five years, followed by a term of supervised release of up to three years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000 as to Count 1. The defendant also understands and acknowledges that, as to Count 13, the court may impose a term of imprisonment of up to thirty years, followed by a term of supervised release of up to five years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$1,000,000 as to Count 13.

5. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph three of this agreement, a special assessment in the amount of \$200 will

be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

6. The Office of the United States Attorney for the Southern District of Florida, (hereinafter "Office"), reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The United States agrees that it will recommend at sentencing that the court reduce by three (3) levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(b) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. The United States, however, will not be required to make this recommendation if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

a. Applicable Guidelines Manual: That the 2000 Guidelines Manual is the proper manual to be used in calculating the defendant's advisory sentencing range, inasmuch as the conduct underlying the offenses of conviction terminated before November 1, 2001.

b. Grouping: That under U.S.S.G. § 3D1.2(d), the two counts of conviction are grouped together because they are both covered by guideline § 2F1.1; and that under U.S.S.G. § 3D1.3(b), the offense level applicable to the Group is the offense level corresponding to the aggregated quantity.

c. Advisory sentencing range: That the applicable guideline to be used in calculating the defendant's advisory sentencing range is U.S.S.G. § 2F1.1; that under § 2F1.1(a), the defendant's Base Offense Level is 6; that under § 2F1.1(b)(1)(P), 16 levels are added due to the aggregated amount of loss; that under § 2F1.1(b)(2), 2 levels are added because the offense involved more than minimal planning; that under § 2F1.1(b)(6), 2 levels are added because the offense involved sophisticated means; that under § 2F1.1(b)(8)(B), 4 levels are added because the offense affected a financial institution and the defendant derived more than \$1,000,000 in gross receipts from the offense; and that under § 3E1.1(b), 3 levels are subtracted for acceptance of responsibility (contingent on the satisfaction of the conditions enumerated above in paragraph 7); that no other adjustments or departures are readily provable or applicable to the defendant's conduct; that neither party will seek any additional adjustments under Chapters 2 or 3 of the Sentencing Guidelines; and that the combined total offense level is therefore 27. Assuming that the defendant is determined to have a criminal history category of I, a total offense level of 27 results in an applicable advisory guideline range for the defendant of 70 to 87 months.

d. Sentencing recommendation: That, based on consideration of the advisory sentencing range and the sentencing factors of 18 U.S.C. § 3553(a), the United States and the defendant agree that the defendant should be sentenced to 78 months' imprisonment and that such a sentence is a reasonable sentence under the circumstances of this case (before accounting for a substantial assistance departure, if any, under ¶¶13 and 14 of this agreement). The parties further agree to recommend that, in view of the defendant's restitution obligations, that all assets forfeited whether directly or as substitute asset in satisfaction of the money judgment will be applied directly to the satisfaction of the restitution order entered by the court. *See* ¶12, *infra*.

9. The defendant agrees to the entry of a money judgment in the amount of \$22,556,100.00 dollars which represents proceeds the defendant and his co-conspirators obtained as a result of the violations charged in the indictment. In partial satisfaction of this money judgment, the defendant agrees to forfeit to the United States voluntarily and immediately all of his right, title and interest in all assets, and/or their substitutes which are subject to forfeiture pursuant to Title 18 United States Code, Sections 982 (a)(2)(A), 981 (a)(1)(c) and Title 28, United States Code, Section 2461(c), including but not limited to:

- a) one piece of real property located at 12850 Red Road, Coral Gables, FL 33156 titled in the name of Inversiones Rapidven, S.A.. The defendant agrees to execute any and all documents necessary to transfer his right, title, and interest in the residence to the United States to be forfeited and applied towards the restitution order entered by the Court consistent with this agreement.

b) **Miscellaneous Jewelry Purchased with Fraud Proceeds:**

Miscellaneous Jewelry Purchased with Fraud Proceeds					
Asset Bank	Account No.	Purchase Date	Check No.	Bought From	Amount
Mellon United National Bank	45039419	8/2/01	103	Miguel Laufer Jewelry, Inc.	\$9,400.00
Mellon United National Bank	45039419	8/6/01	104	J.M. Diamonds, Inc.	14,000.00
Mellon United National Bank	45033206	8/26/00	141441	Gem Galleries, Inc.	10,000.00
Mellon United National Bank	45033206	9/4/00	1582	Gem Galleries, Inc.	25,000.00
Mellon United National Bank	45033206	8/28/01	1812	Miguel Laufer Jewelry, Inc.	7,090.00
Mellon United National Bank	10108233	12/13/01	1015	Riviera Jewelry Co. Inc.	20,000.00

c) **Purchase of Artwork:**

Purchase of Artwork Artwork					
Asset Bank	Account No.	Purchase Date	Check No.	Bought From	Amount
	02/800104.00				\$110,050.00
Bank Leu Ltd	1	5/29/01		D.L.G. Art, Inc.	0
	02/800104.00				
Bank Leu Ltd	1	9/10/01		D.L.G. Art, Inc.	10,000.00
	02/800104.00				
Bank Leu Ltd	1	9/26/01		D.L.G. Art, Inc.	55,050.00

Asset Bank	Account No.	Purchase Date	Check No.	Bought From	Amount
	02/800104.00			Christie,	
Bank Leu Ltd	1	9/26/01		Manson & Woods	56,600.00
	02/814520.00			Claudio	
Bank Leu Ltd	1	7/5/01		Poleschi	65,050.00

d) **Bank Accounts:**

Bank Name	Account Number	Account Holder
Dresdner Bank Lateinamerika AG	02723438.00.400	Calmaquip Engineering Corp.
Dresdner Bank Lateinamerika AG	2272343860400	Calmaquip Engineering Corp.
Mellon United National Bank	0011157534	Calmaquip Engineering Corp.
Mellon United National Bank	0011160181	Calmaquip Engineering Corp.
Mellon United National Bank	004-503941-9	Katherine Alayon DuBois
Pan American Bank	3000312102	Calmaquip Engineering Corp.
TotalBank	26466306	Maria D. DuBois
TotalBank	00192723-06	Argentum International Marketing Services SA
Bank Leu Ltd - Leu Trust and Banking (Bahamas) LTD 2nd Floor Norfolk House, Frederick	0810270 JPY	Bocora Holdings, Inc. C-12

Bank Name	Account Number	Account Holder
Bank Leu Ltd - Leu Trust and Banking (Bahamas) LTD 2nd Floor Norfolk House, Frederick	0810270.01 EUR	Bocora Holdings, Inc. C-12
Bank Leu Ltd - Leu Trust and Banking (Bahamas) LTD 2nd Floor Norfolk House, Frederick	0810270.01 GBP	Bocora Holdings, Inc. C-12
Bank Leu Ltd - Leu Trust and Banking (Bahamas) LTD 2nd Floor Norfolk House, Frederick	0810270.01(USD)	Bocora Holdings, Inc. C-12
Bank Leu Ltd - Leu Trust and Banking (Bahamas) LTD 2nd Floor Norfolk House, Frederick	810270.004(USD)	Bocora Holdings, Inc. C-12
Bank Leu Ltd - Leu Trust and Banking (Bahamas) LTD 2nd Floor Norfolk House, Frederick	800096.01	Bocora Holdings, Inc. C-12 No. 2
Bank Leu Ltd - Leu Trust and Banking (Bahamas) LTD 2nd Floor Norfolk House, Frederick	02/800116.001	Bocora Holdings, Inc. C-12 No. 3

10. Defendant agrees that the aforementioned property is property constituting or derived from any proceeds the defendant obtained, directly or indirectly, as a result of unlawful activities or was used or intended to be used, in any manner or part, to commit or facilitate the commission

of unlawful activities charged in the indictment, or is substitute asset for said violations, and is therefore subject to forfeiture pursuant to Title 18 United States Code, Sections 982 (a)(2)(A), 981 (a)(1)(C) and 28, United States Code, Section 2461 (c). The defendant knowingly and voluntarily waive any claim or defense he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited asset. The defendant knowingly and voluntarily waives his right to a jury trial on the forfeiture of assets.

11. The defendant also agrees that the defendant shall assist this Office in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal property, cash and other monetary instruments, wherever located, which the defendant or others to his/her knowledge have accumulated as a result of illegal activities charged in the indictment. Such assistance will involve an agreement on defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be identified as being subject to forfeiture, and the voluntary repatriation of the contents of funds held in any foreign account, wherever located, that are subject to forfeiture or which may be used to satisfy the money judgment and ultimately the restitution order. Additionally, defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to this Office upon this Office's request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property.

12. Pursuant to 18 U.S.C. §3663(a)(3), the defendant agrees to pay restitution to the following banks, in the following amounts:

Colonial Bank:	\$3,600,000.00
Wachovia Bank, N.A.:	\$3,206,118.00
Totalbank:	\$3,974,982.00
Hemisphere National Bank:	\$2,000,000.00
International Bank of Miami:	\$2,900,000.00
Intercredit Bank, N.A.:	\$2,875,000.00

The defendant also agrees to pay restitution to the Republic of Trinidad and Tobago, the specific amount to be negotiated at a later date, but in no event shall it exceed four million dollars (\$4,000,000.00). If the parties cannot agree on a specific amount payable to the Republic of Trinidad and Tobago, the parties will submit the amount of restitution (up to \$4,000,000) for decision by the court pursuant to the factors set forth in 18 U.S.C. §3663(a)(1)(B). As an initial lump-sum payment of his restitution obligations, the United States agrees to recommend that the proceeds from the sale of the real property located at 12850 Red Road, Coral Gables, FL 33156 identified in paragraph 9, supra as being subject to forfeiture, be applied to partial satisfaction of any restitution order entered by the Court.

13. The defendant agrees that he shall cooperate fully with this Office by:

(a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding;

(b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office; and

(c) if requested by this Office, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct under the supervision of, and in compliance with, law enforcement officers and agents.

14. This Office reserves that right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If in the sole and unreviewable judgement of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the court's downward departure from the sentence required by the Sentencing Guidelines, this Office may at or before sentencing make a motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending sentence reduction. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file such a motion and that this Office's assessment of the nature, value, truthfulness, completeness and accuracy of the defendant's cooperation shall be binding on the defendant.

15. The defendant understands and acknowledges that the court is under no obligation to grant a government motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 14 of this agreement, should the government exercise its discretion to file such a motion.

16. The United States and the defendant further agree that this plea agreement relates to the charges as set forth in Criminal Indictment Number 05-20859-CR-HUCK(s)(s) and the defendants' guilty pleas relate solely to the facts as set forth in the indictment and the plea colloquy.

17. The Office is unaware of any other criminal investigation pending or contemplated against the defendant in the United States, and further agrees that it will not file any additional charges against the defendant related to conduct of the defendant of which the Office is currently aware and which relates to the charges contained in the Second Superseding Indictment.

18. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

19. The defendant is aware that Title 18, United States Code, Section 3742, affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange

for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742, to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the court establishes at sentencing. This appeal waiver includes a waiver of the right to appeal the sentence on the ground that the sentencing guidelines are in any respect unconstitutional, or on the grounds that any fact found by the Court at sentencing was not alleged in the indictment, admitted by the defendant, found by a jury, or found beyond a reasonable doubt. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights, except for the waiver of appeal on the ground that the sentencing guidelines are in any respect unconstitutional and on the grounds that any fact found by the court at sentencing was not alleged in the indictment, admitted by the defendant, found by a jury, or found beyond a reasonable doubt. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorney. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case was knowing and voluntary.

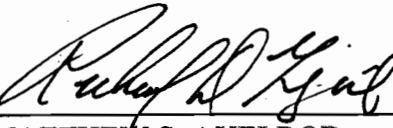
20. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

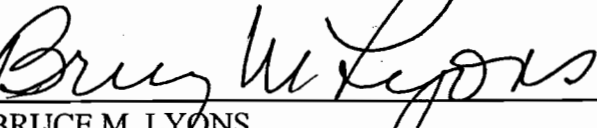
Date: 11/3/06

By: 
RICHARD D. GREGORIE
ASSISTANT UNITED STATES ATTORNEY


Date: 11/3/06

By: 
MATTHEW S. AXELROD
ASSISTANT UNITED STATES ATTORNEY

Date: 11-3-06

By: 
BRUCE M. LYONS
ATTORNEY FOR DEFENDANT

Date: 11-3-06

By: 
RAUL J. GUTIERREZ
DEFENDANT